

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Katz

Application No. 09/371,212

Filed: August, 10, 1999

For: METHOD FOR BUYER-SELLER
ON-LINE COMMERCE

) Customer No.: 35,554
)
) Confirmation No.: 8956
)
) Group Art Unit: 2614
)
) Examiner: Stella L. Woo
)
) Docket No.: 6046-101N6
)
)

BRIEF OF APPELLANT IN APPLICATION NO. 09/371,212
(PURSUANT TO MPEP §§ 2273-2279 AND 35 U.S.C. 306)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Brief is further to the Notice of Appeal filed on July 25, 2008, received by the U.S. Patent & Trademark Office on July 29, 2008. The Appeal Brief is due on February 25, 2009.

Claims 51-111 are pending in this Application and remain rejected in the final office rejection ("FOA"). Accordingly, the final rejection of claims 51-111 is appealed here. The Applicant respectfully requests the Board to confirm the rejected claims for the reasons demonstrated in this Brief. In addition, the remarks urged in the twelve responses (during prosecution) submitted on December 18, 2001; August 5, 2002; May 1, 2003; November 24, 2003; December 1, 2003; March 31, 2004; September 1, 2004; July 1, 2005; July 29, 2005; April 26, 2006; February 21, 2007; and November 5, 2007, respectively, are incorporated herein by reference.

Remarks begin on page 2 of this Appeal Brief.

REMARKS

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I. REAL PARTY IN INTEREST

The present patent application by inventor Ronald A. Katz is assigned to an entity named **Telebuyer, LLC**.

II. RELATED APPEALS AND INTERFERENCES

An Appeal of a related patent, U.S. Patent No. 7,019,770, at the U.S. Patent Office is listed below:

1. U.S. Application Serial No. 08/407,064 to Katz, Appeal No. 2003-1089. (copy of Decision on Appeal dated: August 25, 2004, see EXHIBIT A)

III. STATUS OF CLAIMS

Claims 51-111 are pending. Claims 51-111 remain rejected in the Final Office Action ("FOA") dated January 25, 2008. The bases for the U.S. Patent Office's ("Patent Office") rejections and the locations in the FOA where they are presented are indicated in Section VI for ease of reference.

IV. STATUS OF AMENDMENTS

The claims as presented here have been amended at least twelve times in the various responses submitted during prosecution. With respect to claim 51, Applicant notes that "of" is inadvertently missing before the recitation "the transaction" in the second step of the claim starting with "establishing electronic communication with at least one vendor site...."

V. SUMMARY OF CLAIMED SUBJECT MATTER (OF THE REJECTED CLAIMS)

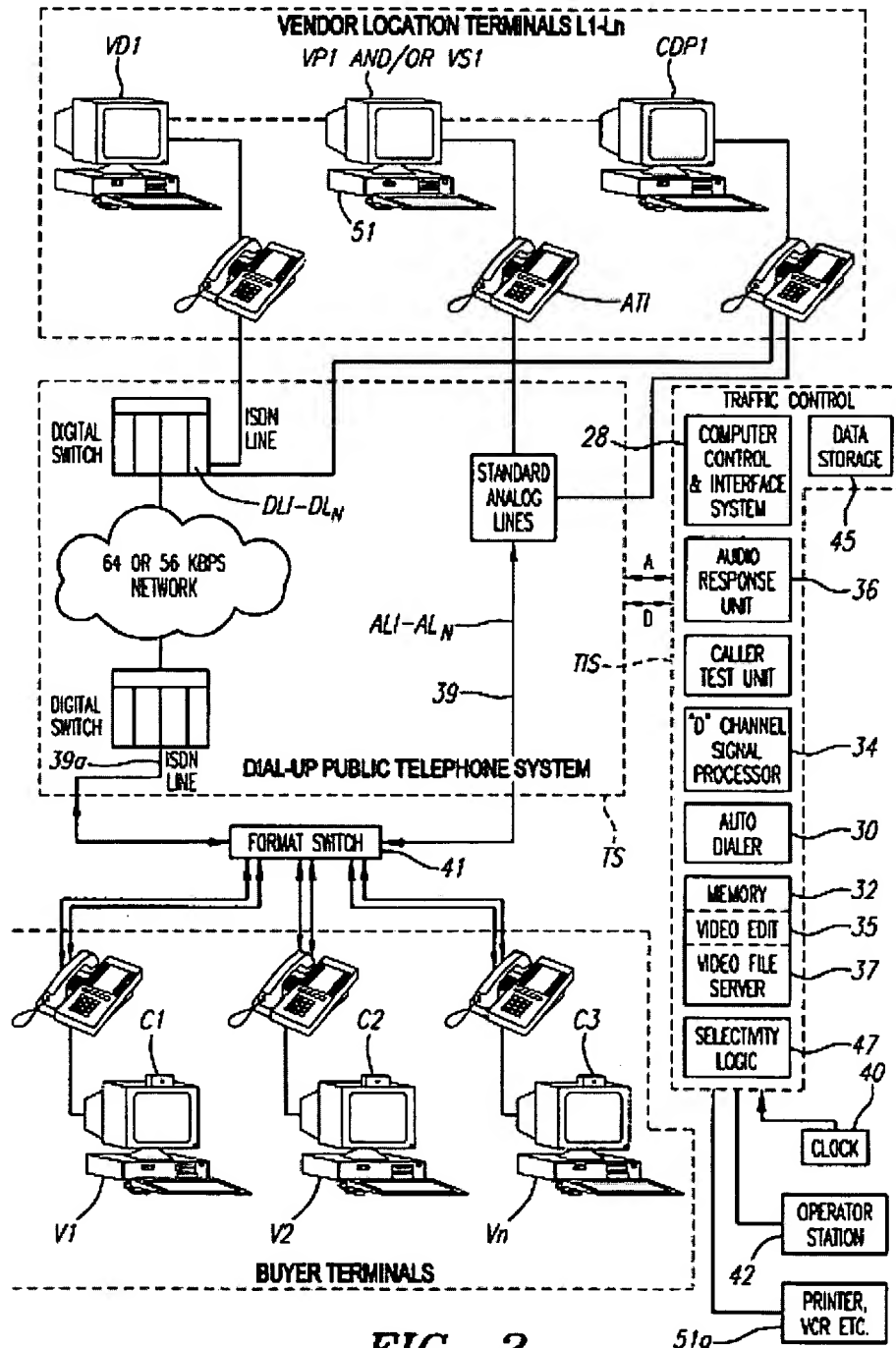


FIG. 2

The invention (e.g., with reference to Fig. 2 above) as defined by independent claim 51 is directed to a method of using a traffic control system via a computer terminal for communication involving a buyer terminal and at least one vendor site for the purpose of making sales-related transactions. The method involves the steps of (a) establishing electronic communication from a buyer terminal to receive a buyer request via the traffic control system indicating a transaction including a good or service and a specified maximum purchase price provided during an initial phase of the communication for it that the buyer is willing to pay; (b) establishing electronic communication with at least one vendor site to transmit the buyer request whereby an interested vendor receiving the buyer request may respond with specific video data relating to the particular good or service of the transaction; (c) making a record regarding the transaction for billing purposes and utilizing data that identifies the buyer wherein the data includes a check digit; and (d) qualifying the buyer for access to the traffic control system for directing communications between the buyer and the vendor relating to transactions at least in part based on the check digit; and (e) providing an electronic mail message to the buyer relating to the transaction.

The invention (e.g., with reference to Fig. 2 above) as defined by claim 80 is directed to a method of using a traffic control system via a computer terminal for communication involving a buyer terminal and a plurality of different vendor sites for consummating sales transactions. The method involves the steps of (a) establishing electronic communication from a buyer terminal to receive a buyer request expressing an area of interest via the traffic control system indicating a transaction including a good or service and a specified maximum purchase price provided during an initial phase of the communication for a particular good or service that the buyer is willing to pay; (b) establishing electronic communication with at least one vendor terminal site selected from the plurality of different vendor sites by the traffic control system to transmit the buyer request whereby an interested vendor site receiving the buyer request responds, as to make a transaction and whereby the interested vendor site communicates stored video data to the buyer terminal including dynamic or high resolution video and text data, where the buyer utilizes a mouse to manipulate the stored video at the buyer terminals; (c) making a record regarding the transaction for billing purposes; and (d) providing an electronic mail message to the buyer terminal relating to the transaction.

The invention (e.g., with reference to Fig. 2 above) as defined by claim 107 is directed to a method for enabling communications including video communications under control of a traffic control system via a public communication system between at least one user at a user terminal and at least one responding vendor site, comprising the steps of (a) establishing an interface to enable the communication between at least one user at the user terminal and the responding vendor site by receiving inquiry data from the user when the user initiates a communication including identification data relating to the user and an area of interest including an indication of the price that the user is willing to pay for a product or service relating to the area of interest; (b) receiving and storing data relating to various areas of interest at a memory storage associated with a responding vendor site under control of the traffic control system; (c) selectively selecting the responding vendor site from a plural of vendor sites under control of the traffic control system based on the area of interest expressed by the user and the indication of the price that the user is willing to pay, and selectively locating video and text data relating to the area of interest and providing selected video and text data to the user at the user terminal; and (d) providing an electronic mail message to the user terminal relating to the area of interest.

The invention (e.g., with reference to Fig. 2 above) as defined by claim 108 is directed to a method using one or more central control units for selectively directing communications via a public communication system from buyers to one or more vendor sites. The method involves the steps of (a) at least one buyer communicating with the central control unit via an on-line computer service, the buyer utilizing a personal computer with a video capability, the buyer as part of the step of communication indicating an area of interest including an indication of the price that the buyer is willing to pay for a product or service relating to the area of interest; (b) selectively determining under control of the central unit, a select vendor or vendors to which a communication from the buyer should be routed based on the area of interest; (c) routing the communication to a select vendor or vendors under control of the central unit; and (d) providing the buyer with text and video data relating to the area of interest, the text and video data relating to the select vendor or vendors and provided under control of the central unit.

The invention (e.g., with reference to Fig. 2 above) as defined by claim 109 is directed to a traffic control system for enabling communications including video communications via a public communication system between at least one user at a user terminal and at least one responding site. The traffic control system comprises an interface for enabling a communication between at least one user at the user terminal and a select responding site by receiving inquiry data from the user when the user initiates the communication, the inquiry data relating to the user's area of interest and including an indication of the price that the user is willing to pay for a product or service relating to the area of interest, the interface also receiving identification data provided from the user terminal. It also comprises memory storage associated with the at least one select responding vendor site to receive and store data relating to various areas of interest and a processor coupled to the interface, wherein the processor utilizes the area of interest indicated by the user to selectively determine and select the responding site from a plurality of sites, and wherein the processor obtains select video and text data relating to the area of interest from the responding vendor site and provides the select video and text data to the user at the user terminal. Lastly, an electronic mail message is transmitted to the user terminal relating to the user's area of interest.

The invention (e.g., with reference to Fig. 2 above) as defined by claim 110 is directed to a system comprising one or more central control units for selectively directing communications via a public communication system from buyers to one or more vendor sites. The system comprises an interface structure to facilitate communication between at least one buyer and the central control unit via an on-line computer service, the buyer utilizing a personal computer with a video capability, the buyer indicating an area of interest via the personal computer including an indication of the price that the buyer is willing to pay for a product or service relating to the area of interest. The system further comprises processing capability for selectively determining under control of the central unit, a select vendor or vendors to which a communication from the buyer should be routed based on the area of interest. The system routes the communication to a select vendor or vendors under control of the central unit and further comprises a memory associated with the vendor or vendor sites wherein text and video data relating to the area of interest and other data is stored whereby the processor provides the buyer with

selective text and video data relating to the area of interest, the text and video data relating to the select vendor or vendors and provided under control of the central unit.

The invention (e.g., with reference to Fig. 2 above) as defined by claim 111 is directed to a system for facilitating selective commercial transactions between a plurality of buyers and a plurality of vendors of items, through a telephonic communication system capable of providing communication between a vendor and buyer sites associated with buyers and including an input means and a display. The system comprises a means for causing a vendor to be identified for selection for a buyer at a buyer site when the buyer indicates an area of interest including an indication of the price that the buyer is willing to pay for merchandise items relating to the area of interest. In addition, the system comprises a means for effecting presentation of merchandise items including video presentations of the merchandise items with text data on a display for the buyer's observation. It also includes an item database associated with a vendor for storing information on identified merchandise items and a means for receiving information from the item database, including data to indicate a cost associated with a presented item. The system also includes a buyer information database for storing information relating to a buyer. Finally, it has a control means for responding to buyer inquiries, communicated through the input means, regarding a presented merchandise item by accessing the item database to selectively determine and retrieve information relating to said merchandise item and to present the information to the buyer by means of the display. The system receives the buyer's selection of a presented merchandise item through the input means and exchanges communications between vendors and buyers during which a sale can be consummated for a presented merchandise item to the buyer, including communication by at least one electronic mail message relating to the presented merchandise item.

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

- A. Whether Claims 51-79 were improperly rejected under 35 U.S.C. § 103 as being unpatentable over Shavit et al. in view of Kaye et al., Foster et al., and Smith (corresponds to the rejection at page 2 of the FOA).

- B. Whether Claims 80-110 were improperly rejected under 35 USC 103 as being unpatentable over Shavit et al. in view of Kaye et al., Smith, and Dworkin (corresponds to the rejection at page 4 of the FOA).
- C. Whether Claim 111 was improperly rejected under 35 USC 103 as being unpatentable over Dworkin in view of Smith and further in view of Kaye et al. (corresponds to the rejection at page 8 of the FOA).

VII. ARGUMENTS

It is respectfully submitted that the Patent Office's action of January 25, 2008, (FOA) should be reconsidered and on reconsideration reversed. The Applicant demonstrates here that the combinations of references is not only improper under the standard for evaluating obviousness as indicated by the Supreme Court, but they also do not teach all of the claimed elements of the rejected claims at issue.

VIII. The Rejections Under 35 U.S.C. § 103 Are Unsupported and Should Be Withdrawn

Applicant respectfully submits that there is no basis to reject the instant claims under § 103. The Applicant requests the Board to withdraw the rejections under 103 and confirm the claims.

A. Governing Criteria

For rejections under 35 U.S.C. Section 103, the establishment of a *prima facie* case of obviousness requires that all the claim limitations must be taught or suggested by the prior art. MPEP § 2143.03 The establishment of a *prima facie* case of obviousness requires that the claimed combination cannot change the principle of operation of the primary reference or render the reference inoperable for its intended purpose. MPEP § 2143.03.

The Supreme Court set the standard for evaluating obviousness in its recent decision (*KSR International Co. v. Teleflex Inc. et al.* (550 U.S. 398 (2007))) to be “expansive and flexible” and “functional.” However, the standard is not controlling,

rather, the various noted factors only “can” or “might” be indicative of obviousness based on the facts. The Supreme Court in *KSR* enunciated the following principles:

“[w]hen a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, Section 103 likely bars it patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill....[A] court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions.

Simply using the benefit of hindsight in combining references is improper. *In re Lee*, 277 F.3d 1338, 1342-45 (Fed. Cir. 2002); *In re Deminski*, 796 F.2d 436, 442 (Fed. Cir. 1986)). The Supreme Court while recognizing the need “to guard against slipping into the use of hindsight,” acknowledged the following principles:

[r]ejection on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.

[I]t can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.

One of the ways in which a patent’s subject matter can be proved obvious is by noting that there existed at the time of invention a known problem for which there was an obvious solution encompassed by the patent’s claims.

Rather, obviousness is to be determined from the vantage point of a hypothetical person having ordinary skill in the art to which the patent pertains. See 35 U.S.C. § 103(a). The legal construct also presumes that all prior art references in the field of the invention are available to this hypothetical skilled artisan. *In re Carlson*, 983 F.2d 1032, 1038, 25 USPQ 2d 1207, 1211 (Fed. Cir. 1993). The Supreme Court in *KSR* stated that:

a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was independently, known in the prior art.

An examiner may often find every element of a claimed invention in the prior art. “Virtually all [inventions] are combinations of old elements.” *Environmental Designs*,

Ltd. V. Union Oil Co., 713 F.2d 693, 698, 218 USPQ 865, 870 (Fed.Cir. 1983), cert. denied, 464 U.S. 1043 (1984); see also *Richel, Inc. v. Sunspool Corp.*, 714 F.2d 1573, 1579-80, 219 USPQ 8, 12 (Fed.Cir. 1983). If identification of each claimed element in the prior art were sufficient to negate patentability, very few patents would ever issue. Furthermore, rejecting patents solely by finding prior art corollaries for the claimed elements would permit an examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention. Such an approach would be “an illogical and inappropriate process by which to determine patentability.” *Sensonics, Inc. v. Aerosonic Corp.*, 81 F.3d 1566, 1570, 38 U.S.P.Q.2d 1551, 1554 (Fed.Cir.1996). In other words, the examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed. The Supreme Court in *KSR* has also stated that:

[o]ften, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the market place.

Further, the Supreme Court states that:

The Court relied upon the corollary principle that when the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be nonobvious.

When considering the question of obviousness, further evidence of nonobviousness may also be considered, such as, for example, commercial success of the subject matter. *Perkin-Elmer Corp. v. Computervision Corp.*, 732 F.2d 888, ~~893~~ 895 (Fed. Cir. 1984).

The claims at issue define substantial improvements over the applied art in the form of combinations of functionalities and system components or equipment that perform those functionalities. When properly viewed against the applicable standard and as shown in detail below, none of the asserted references, when considered either individually or collectively, teach or suggest the claimed combinations of functionalities and system components. The claimed subject matters would have been unobvious to a person of ordinary skill at the time of the inventions claimed in this patent.

B. Rejection of Claims 51-79 under Shavit et al. in view of Kaye et al., Foster et al., and Smith (FOA, page 2)

In paragraph 2 of page 2 of the FOA, Claims 51-79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shavit et al., in view of Kaye et al., Foster et al., and Smith. Applicant traverses this rejection and demonstrates below why this rejection is not only improper, but fails to meet all the claimed elements.

1. *Shavit, Kaye, Foster and Smith are nonanalogous art improperly relied upon to form the basis for the rejection.*

At the outset, Patent Office reference classifications are evidence of nonanalogy.¹ MPEP § 2141.01(a)(I); See also MPEP §§ 903 et seq.. The four patents that are combined fall under entirely distinct classifications, which purport to delineate one technology from another and to ensure subject matter in one class does not overlap subject matter in another class. The classifications of the references reveal that the patents are directed to technologies that are distinct and therefore, not obvious for a combination as proposed by the Examiner. The combination proposed is improper and clearly based on hindsight.

¹ See Overview of the U.S. Patent Classification System (USPC), §§ 1.1 & 1.5.1, December 2008. (“1.1 The USPC

The USPC is a system for organizing all U.S. patent documents and many other technical documents into relatively small collections based on common subject matter. Each subject matter division in the USPC includes a major component called a class and a minor component called a subclass. **A class generally delineates one technology from another.** Subclasses delineate processes, structural features, and functional features of the subject matter encompassed within the scope of a class. Every class has a unique alphanumeric identifier, as do most subclasses.

A class/subclass pair of identifiers uniquely identifies a subclass within a class (for example, the identifier “2/456” represents Class 2, Apparel, subclass 456, Body cover). This unique identifier is called a classification symbol, or simply a classification, or USPC classification, to distinguish it from classifications of other patent classification schemes. A subclass represents the smallest division of subject matter in the USPC under which documents may be collected.

A collection of documents is defined as a set of documents sharing a common classification. A classification assigned to a document associates the document to the class and subclass identified by the classification. Documents are “classified in a subclass” if a classification corresponding to the unique subclass has been assigned to it. A document may be a member of more than one collection, i.e., it may have more than one classification assigned to it. **Classifications are assigned to documents based on disclosure in the document.**

...

1.5.1 Class Properties

Classes are mutually exclusive, meaning that the subject matter provided for by one class does not overlap that provided for by another. This principle was developed to ensure that patents are consistently classified into the USPC; however, in practice, emerging technologies not clearly provided for in any one class may develop in more than one class simultaneously.) (emphasis added).

- | | | |
|-----|---------------|-------------------|
| (1) | Shavit et al. | 364/401 and 408 |
| (2) | Kaye et al. | 395/228, 229, 615 |
| (3) | Smith | 348/17,96 |
| (4) | Foster et al. | 379/94,105. |

On this basis alone, Applicant submits the references are improperly combined and do not support the rejection. However, differences in structure and function of the inventions disclosed in the references also serve to reveal the nonanalogous character of a purported combination. MPEP § 2141.01(a)(II).

Indeed, the functions of the combined art are quite distinct. Shavit is directed to an invention for a user-directed messaging system to facilitate business transactions. Kaye is directed to a search facility to locate a vendor and transfer items that are pre-selected by a user to offsite computers. Foster is directed to an order entry system for cable service providers. Smith is directed to combining audio and video signals from different sources and is limited to that function only. The problems defined within each reference confronting a person with ordinary skill in the art are not only different, but are solved in a manner altogether different from the next. The only commonality that exists in each reference resides in the fact that each reference involves computer and telephone-related elements and functions. It is not logical or predictable that one of ordinary skill in the art would combine four such disparate references to arrive at the present claims. Any combination to that effect can only result from reading the Applicant's disclosure and piecing together teachings in each reference to meet the claims here. Therefore, Applicant respectfully submits that the combination of the four references is improper and requests the Board to reverse the rejections based on this combination.

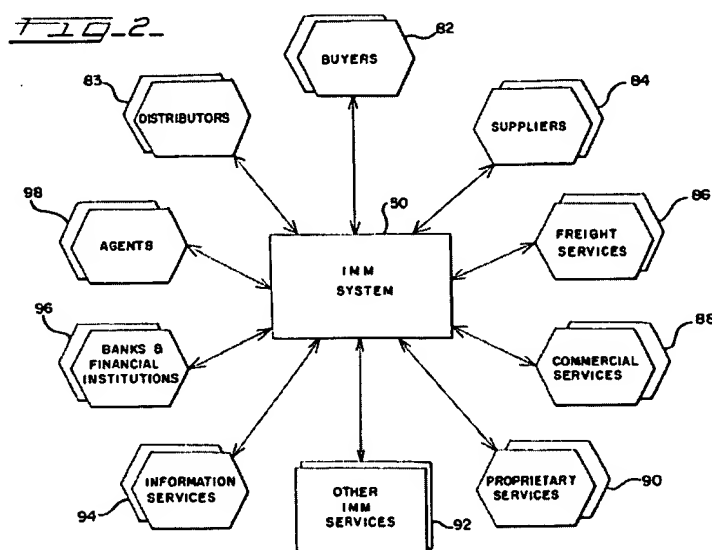
2. *Shavit, Kaye, Foster and Smith do not alone or in combination teach or suggest each and every element of the claims.*

Even if the combination were proper, the combination of not two, but four references still does not satisfy all the elements of the claims. First, regarding Shavit, the Examiner acknowledges that Shavit "does not specify the buyer request as including a specified purchase price." (FOA, page 3). Applicant agrees. In addition, Applicant notes that Shavit does not teach or suggest other elements of the claims as well. Shavit is

a user-directed messaging system that merely enables a buyer to conduct business with one distributor at a time (see Shavit's Fig. 2 below) and lacks the decision making capability that is an essential element of the present claims. For example, Shavit discloses:

Once past the standard access procedure and having either passed through the mail session or delayed mail processing, **the user is asked to select the type of information provider** (e.g. distributor, freight carrier, financial institution, etc.) the user wants to communicate with. After the user has passed through the necessary security validation, **the user is asked to select the party he wishes to interact with** and the system validates that the selected part is willing to accept such a transaction session. The results of the validation check may be an acceptance of the session by the provider, a demand for additional security information (e.g. additional password), a total rejection of the session, or an acceptance of the session on the condition that the user will accept the costs.

As an example of a transaction, a buyer may request a transaction with a particular distributor. In this case, if the buyer passes through the security validation levels as required, the buyer may receive one frame of news/promotion information prepared by the selected distributor. This frame may be changed by the distributor as frequently as desired. The user may then proceed with the transaction session or **elect enter a promotional review session**. The variety of services that are available from the distributor when the transaction session proceeds are presented to **the user for his selection by a menu**. (Col. 12, lines 27-53) (emphasis added).



In Shavit, a user directs all communications with the system and a particular distributor. The user specifically chooses the other party in the transaction. Even when more than one distributor is contacted, it is the user that controls the sessions, not Shavit's system. For example, in describing communication with more than one party, Shavit discloses:

Concurrent communications is provided by the system 50 during any transaction session permitting any user to concurrently communicate with a plurality of different types of parties. Thus, for example, during an interactive session with a buyer, a seller may communicate concurrently with a financial institution to arrange financing, a supplier to procure a needed item and a freight carrier to arrange for shipment. Such concurrent sessions may be conducted using various techniques, **including windowing or flipping from one party to another**. (Col. 11, lines 11-21) (emphasis added).

In other words, the user "flips windows" from one party to another; the user controls the entire process. Moreover, during a user-controlled session, the seller (selected by a user) can communicate with other parties necessary to a user's transaction in concurrent communications. At no point does Shavit's system select parties for a user to communicate with based on some decision criteria executed by the system.

The Examiner contends that Shavit discloses:

establishing telephonic communication from a buyer terminal to receive a buyer request (a buyer can submit a request for quotation (RFQ) over the public telephone system; col. 11, lines 39-51; col. 12, line 54 - col. 13, line 10); indicating a transaction (the RFQ includes the goods or services desired by the buyer; col. 12, line 63 - col. 13, line 9); and establishing telephonic communication with at least one vendor terminal to transmit the buyer request (the RFQ data is transmitted to a distributor for authorization, resulting in a bid released to the buyer for conversion to a purchase order; col. 13, lines 29-34; col. 13, line 54 - col. 14, line 9). (FOA, page 3).

However, the citations are taken out of context of the operation of Shavit's system and applied to the elements of the claim with no regard to the actual scope of Shavit's system. Shavit's system controls none of these functions, but rather acts as a conduit for passing mail messages that may or may not contain data such as RFQ data. So, whereas Shavit may use some terms as the present claims, the scope of what these terms mean in Shavit is very distinct. For example, a buyer directs any RFQ after selection of a vendor. (See col. 11, line 39 – col. 12, line 18). An RFQ cannot be created until establishing contact

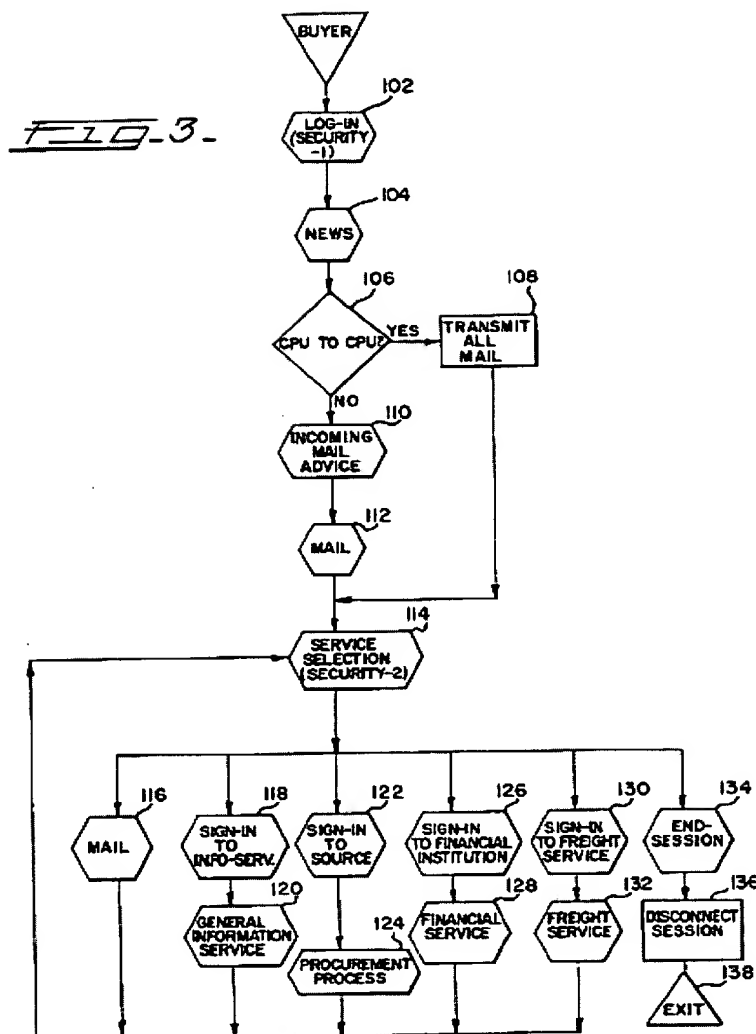
with a particular vendor. Thus, the particular RFQ is necessarily limited to the vendor selected by the user. Once the user selects the vendor, Shavit falls outside the scope of the present claims. Moreover, once a bid is made, “the system generates an automatic memo in its electronic mailbox notifying the user that a new bid is now available.” (Col. 13, lines 25-27). In other words, the system does not transmit the buyer request, but rather stores it, and issues a memo whereby the user can access the bid at a later time.

As stated in the February 7, 2007, Reply to the Office Action dated August 7, 2006, the present claims emphasize that the central unit (i.e. the traffic control system) is the “entity” making the selection of vendors based on the area of interest including an indication of the price. In the present claims, a buyer request exists before establishing electronic communication. Shavit has no such capability, as it is entirely user-directed. As such, Shavit is deficient in more than just lacking a specified price.

Moreover, Applicant respectfully submits that Shavit does not disclose purchase requests or proposals. Shavit’s RFQ is a request from a user for price and delivery quotes from a seller. In Shavit, sellers, not buyers, set or indicate prices, and thus, there are no purchase offers or proposals that include an indication of price from the buyer. See in Shavit, for example (also indicated below), col. 15, lines 45-60 and Figure 3, which discusses seller’s price lists and seller price quotations, and col. 13, lines 35-39, which describe that a buyer is provided with fixed prices for a predetermined list of items.

The system 50 also allows the supplier to provide its customers with an on-line interactive sales service providing immediate quotations, confirmations, and status information. Alternatively, some of the transactions may be validated and recorded but the actual confirmation is deferred for either a manual intercept or later processing at the supplier's end. At any point during an interactive session with a supplier, a user may branch into a catalogue/price list search session. While the system supports a wide set of options in searching a supplier's catalogue, a subscriber supplier may elect to support only a subset of these options. Such options include searches by multiple keys partial description, related items (substitutes, complementary, promotional relations, documentations, systems, etc.) as well as multiple ways to price an item.
(*Shavit, col. 15, lines 45-60*)

A distributor may sign a master purchasing agreement with a buyer providing a fixed price as well as a definition of delivery time for a given predetermined list of items. The terms of such an agreement are entered and authorized by the seller.
(*Shavit, col. 13, lines 35-39*)



Shavit, Fig. 3

Because there are no purchase offers or proposals in Shavit, Shavit does not disclose nor suggest the step of receiving a request or proposal from the buyer including the maximum price a buyer is willing to pay.

The Examiner's further combination of Shavit with Kaye does not cure the deficiencies of Shavit. The Examiner contends that "Kaye teaches the desirability of allowing a buyer to specify a maximum purchase price as part of the desired product information (col. 4, lines 11-20; col. 5, line 53 - col. 6, line 2) in order to locate a vendor willing to sell the desired product at a minimum cost." (FOA, page 3). Applicant strongly disagrees.

Kaye teaches away from a combination with Shavit. Kaye describes a system whereby a seller makes available its database of inventory to be downloaded periodically to remote computers (see col. 1, lines 12-17). Thus, each local computer is purported to have a copy of what the seller has designated to be uploaded as the seller's inventory at the time the download was performed (see col. 5, lines 9-11, 31-38). A buyer utilizes the system by performing database searches to find an appropriate product to purchase (see col. 5, lines 53-55). A user using search criteria such as item name, manufacturer information, quantity and cost creates the database searches (see col. 5, lines 56-58). Kaye discloses a "one way" process, seller to buyer, which teaches away from Shavit's interactive, or two-way, process.

The Examiner has interpreted including the maximum purchase price in the search criteria of a database search as a buyer "specifying a maximum purchase price." However, the buyer is not specifying a price at all. At the moment a buyer conducts a search, the seller has already specified the price. In fact, no other entity within Kaye's system knows of the price used in the buyer's search criteria. As such, Kaye is nothing more than a system that enables a vendor, the seller, to specify a price and display it publicly.

Furthermore, nowhere does Kaye disclose that a price input as search criteria by a buyer is a maximum purchase price. The price referred to by the Examiner is the maximum cost a vendor wishes to advertise publicly (see col. 5, lines 31-39). Moreover, Kaye discloses no ability for the buyer to request anything from a seller much less specify a price to a seller. In fact, Kaye does not contemplate a request for quotation process at all. It is analogous to a vendor placing a bag of chips on a display shelf with a pre-stamped price. The buyer must take the price or leave it.

As such, a skilled artisan would not look to Kaye's teachings to select any elements for the combination in the manner claimed by the Applicant. Kaye is only capable of one-way communication, that is, sellers to buyers. Shavit discloses two-way communication between a buyer and a vendor. Based on this lack of basis to combine alone, Applicant submits the rejection should be withdrawn and claims 51-79 be allowed.

The Examiner's further combination of Shavit and Kaye with Foster does not cure the deficiencies of the Shavit and Kaye combination. The Examiner states that the Shavit and Kaye combination "does not specify utilizing data which includes a check digit and

qualifying the buyer at least in part based on the check digit.” Applicant agrees. The Examiner further contends that

Foster teaches the well known use of a check sum digit for verifying an entered number (col. 7, lines 54-65) such that it would have been obvious to an artisan of ordinary skill to use a check sum digit, as taught by Foster, within the combination of Shavit and Kaye in order to verify the number of digits entered by the user as being the expected number of PIN digits. (FOA, page 3-4).

However, Foster discloses using an “order digit count” to “indicate the number of expected digits to be received for the customer order” (See col. 7, lines 42-45). Foster continues to disclose a “check digit” to indicate

whether check sum digit information is to be included in the entered order information....When the order information is to include a check digit (block 503), the processor computes a check digit from the entered digits using a well-known check sum algorithm **to detect dialing errors** such as incorrectly entered digits (block 504)....When the computed and entered check digits do not match, the requesting customer receives an error announcement and instructions to reenter the order information (block 506) (emphasis added).

The use of the check digit as described by Foster is to detect dialing errors in a transaction whereby the customer and vendor are already known (see col. 6, line 34 – col. 7, line 35). Again, Foster teaches away from using a check digit for qualifying buyers as claimed since Foster teaches using check digits only for error detection. As such, the Foster combination does not teach or suggest each and every element of the present claims.

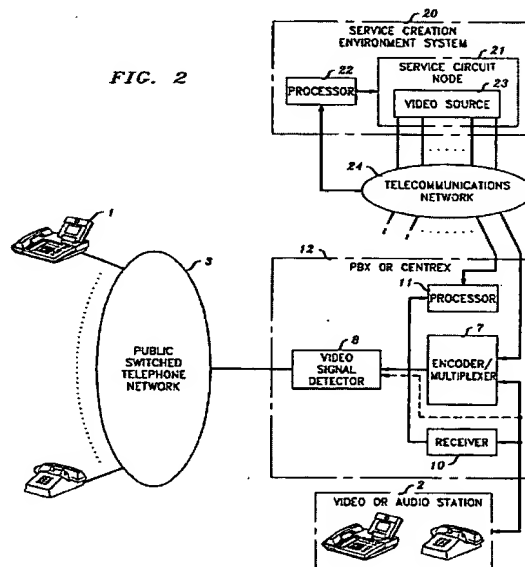
Moreover, Shavit discloses using a user ID and password level of validation to identify a particular user. (See col. 19, lines 35 – col. 20, line 4). Foster does not disclose any reason for using a check digit for such purpose. The reason to combine Foster with Shavit is achieved only through impermissible hindsight. Based on this reason alone, Applicant submits the rejection should be withdrawn and claims 51-79 be allowed.

The Examiner’s further combination of Shavit, Kaye and Foster with Smith does not cure the deficiencies of the Shavit, Kaye and Foster combination. The Examiner states that

The combination of Shavit, Kaye and Foster differs from claims 51-79 in that although it provides for allowing subscriber access to a variety of data

base services (col. 5, lines 58-65; col. 7, lines 6-46), it does not teach the vendor responding with specific video data. However, Smith teaches the desirability of allowing buyer access to a vendor supplied video image stored in a video file server (video source and database 6) for enhancing sales communication with the use of video (col. 1, line 51 - col. 3, line 27) as well as including a camera at the agent's terminal so that direct, real-time, point-to-point video communication can take place between a customer and the representative (col. 3, lines 26-27; col. 4, lines 25-28; moving pictures are communicated via AT&T 2500 video telephone sets, col. 1, lines 27-28) such that it would have been obvious to an artisan of ordinary skill to incorporate such use of dynamic, full-motion video, as taught by Smith, within the method of Shavit in order to allow a buyer to view the desired goods or services as well as real-time video communication between the customer and representative. Smith provides for prompts to view an available video (col. 2, lines 53-56; col. 4, lines 45-50) and providing client specific video (col. 5, lines 48+). (FOA, page 4).

The Examiner has taken generic disclosure and applied the findings to the present claims. Smith involves the combination of audio and video signals from different sources and sending that combination to a telecommunication station and is limited to that function only. For example, with reference to Figure 2 (below) Smith states



This invention relates to an arrangement for supplying audio and video signals from separate sources to a video telecommunication station. In one embodiment, the audio is supplied, for example, by a stock broker or agent, while the video is supplied by a separate source controlled by the agent. Advantageously, pre-planned video from a common source, or video from a separate camera, can be supplied to a caller along with the audio message from the agent. (Abstract).

Smith does not teach a commercial transaction communication control system in the context of the claims. As stated previously, the present claims emphasize the traffic control system controlling the transaction. Smith may disclose a video source and database, however, it is the video or audio station 2 (a separate entity) and not the calling station 1 that enters the request for a display. One skilled in the art would not look to the generic disclosure of Smith to combine with Shavit, Kaye, and Foster to arrive at the present claims.

The cited references do not alone or in combination teach or suggest the present claims as demonstrated. Accordingly, the Applicant requests the Board to withdraw this rejection and to allow the claims.

C. Rejection of Claims 80-110 Under Shavit et al. in view of Kaye et al., Smith, and Dworkin (FOA, page 4)

At page 4 of the FOA, claims 80-110 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shavit et al. in view of Kaye et al., Smith, and Dworkin. Applicant traverses this rejection.

1. *Shavit, Kaye, Foster and Dworkin are nonanalogous art improperly relied upon to form the basis for the rejection.*

Again, the Patent Office reference classifications are evidence of nonanalogy. MPEP § 2141.01(a)(I); See also MPEP §§ 903 et seq. The classifications of three of the combined references fall under entirely distinct classifications:

- | | | |
|-----|---------------|-------------------|
| (1) | Shavit et al. | 364/401 and 408 |
| (2) | Kaye et al. | 395/228, 229, 615 |
| (3) | Foster et al. | 379/94,105 |
| (4) | Dworkin | 364/401 and 408 |

On this basis alone, Applicant submits these references are improperly combined and do not support the rejection. However, differences in structure and function of the inventions disclosed in the references also serves to reveal the nonanalogous character of a purported combination. MPEP § 2141.01(a)(II). Indeed, the functions of the combined art are quite distinct. Shavit is directed towards an invention for a user directed messaging system to facilitate business transactions. Kaye is directed towards a search

facility to locate a vendor and transfer items pre-selected by a user to offsite computers. Foster is directed towards an order entry system for cable service providers. Dworkin is similar to the others in that it is a user-directed search tool not unlike Kaye. The only commonality exists in the computer and telephone related elements and functions. It is not logical or predictable that one of ordinary skill in the art would combine four such disparate references to arrive at the present claims. As such, Applicant respectfully submits relying on the combination of the four references to reject the Applicant's claims is improper and the rejections based on the combination should be reversed.

2. *Shavit, Kaye, Foster and Dworkin do not alone or in combination teach or suggest each and every element of the claims.*

Regarding Shavit, Kaye, and Foster, the Examiner acknowledges the combination does not disclose "the traffic control system selecting a vendor terminal site from a plurality of different vendor sites to transmit the buyer request." (FOA, page 7). Applicant agrees. However, as argued above in Section B(2), Applicant respectfully submits that Shavit, Kaye, and Foster are improperly combined and do not teach or suggest the elements of the present claims for the reasons demonstrated above.

Dworkin does not cure the deficiencies of the Shavit, Kaye, and Foster combination. The Examiner states:

The combination of Shavit, Kaye and Smith differs from claims 80-110 in that it does not specify the traffic control system selecting a vendor terminal site from a plurality of different vendor sites to transmit the buyer request. However, Dworkin teaches the desirability of displaying all vendors who can supply a particular product (col. 6, lines 26-37; col. 7, lines 12-14) such that it would have been obvious to an artisan of ordinary skill to incorporate such vendor selection, as taught by Dworkin, within the combination of Shavit, Kaye and Smith so that buyer requests are submitted only to select vendors who can supply the particular goods or services desired by the buyer. (FOA, page 7).

Not only does the Examiner acknowledge that the Shavit, Kaye and Smith combination does not specify that the traffic control system is selecting vendors, Dworkin is limited to a user-directed process of searching for a product and then selecting a particular product (see col. 2, lines 6-56). Dworkin's system does not select a vendor; the user selects the vendor **only after** selecting a product. (See col. 2, lines 20-33). After a user selects the

product and a vendor to supply the products, the user can then place an order (see col. 2, lines 34-41).

The Examiner contends the combination discloses “buyer requests are submitted only to select vendors who can supply the particular goods or services desired by the buyer.” This characterization of the combination is incorrect. Dworkin is only capable of submitting an order to one vendor. Moreover, Dworkin’s order is submitted after the selection of a vendor teaching away from the present claims. The present claims recite “establishing electronic communication with at least one vendor terminal site **selected from the plurality of different vendor sites by the traffic control system** to transmit the buyer request....” As stated above with respect to the other references, Dworkin’s disclosure falls outside the scope of the present claims.

The cited references do not alone or in combination teach or suggest the present claims. Accordingly, the Applicant requests the Board to withdraw this rejection and to allow the claims.

D. Rejection of Claim 111 Under Dworkin in view of Smith and further in view of Kaye et al. (FOA, page 8)

At page 8 of the FOA, Claim 111 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dworkin in view of Smith and further in view of Kaye et al. Applicant respectfully traverses the rejection.

1. *Dworkin, Smith and Kaye are nonanalogous art improperly relied upon to form the basis for the rejection.*

Again, the Patent Office reference classifications are evidence of nonanalogy. MPEP § 2141.01(a)(I). The classifications of the three combined references fall under entirely distinct classifications:

- | | | |
|-----|-------------|-------------------|
| (1) | Dworkin | 364/401 and 408 |
| (2) | Kaye et al. | 395/228, 229, 615 |
| (3) | Smith | 348/17,96 |

On this basis alone, Applicant submits the references are improperly combined and do not support the rejection. However, differences in structure and function of the

inventions disclosed in the references also serve to reveal the nonanalogous character of a purported combination. MPEP § 2141.01(a)(II). Indeed, the functions of the combined art are quite distinct. Kaye is directed towards a search facility to locate a vendor and transfer items pre-selected by a user to offsite computers. Dworkin is similar to the others in that it is a user-directed search tool not unlike Kaye. Smith is directed towards combining audio and video signals from different sources and is limited to that function. The problems within each reference confronting a person with ordinary skill in the art are different and are solved in a manner altogether different from the next. The only commonality exists in the disclosure of computer and telephone related elements and functions. It is not logical or predictable that one of ordinary skill in the art would combine four such disparate references to arrive at the present claims. As such, Applicant respectfully submits that to rely upon the combination of the three references is improper and the rejections based on the combination should be reversed.

2. *Dworkin, Smith and Kaye do not alone or in combination teach or suggest each and every element of the claims.*

As stated above in Section C(2), Dworkin is limited to a user-directed process of searching for a product then processing the order for the product chosen. Dworkin teaches away from the present claim. The Examiner takes the position that

Dworkin discloses a system for consummating merchandising transactions comprising: means for causing a vendor to be identified (list of suppliers associated with a desired product can be viewed for selection; Fig. 28, step 53, 55, 57); means for effecting presentation of merchandise items (products are displayed; Figure 2A, step 40); an item database (database 3 in Figure 1; col. 3, lines 63-68); means for receiving information including cost (product data including price is received from database 3; col. 6, lines 26-35), a buyer information database (system can store information about each user; col. 8, lines 20-24); a control means (CPU 1; Figures 1, 2A, 28) which allows the buyer to order a selected product (col. 8, lines 3-56) by means of a display (terminal 5 displays menus, product information, vendor information, etc.; Figure 2A, steps 23, 29, 40; Figure 28, steps 51, 55, 69; Figures 3-8) and including communication by at least one electronic mail message (orders to suppliers can be placed by electronic mail; col. 4, lines 19-22; col. 8, lines 32-35).

However, Dworkin's system dictates the price, not the buyer. Dworkin states

Initially, the system shows the user certain basic information such as the manufacturer, model number, and **range of available prices**....When the

user enters the number or identifier of a product or service appearing on the above-described display, the system shows the user the names of the suppliers from whom that product or service can be obtained. **The system also shows the user the prices available from each supplier.** (Col. 2, lines 20-33) (emphasis added).

Nowhere does the buyer have the ability to dictate or indicate the price for any product. The buyer must take or leave the prices returned by Dworkin's system. The present claim recites, in part, a "means for causing a vendor to be identified for selection for a buyer at a buyer site when the buyer indicates an area of interest including an indication of the price that the buyer is willing to pay for merchandise items relating to the area of interest." Based on this fact alone, Dworkin is incapable of teaching or suggesting the present claim.

Kaye also does not cure the deficiencies Dworkin. The Examiner contends:

The combination of Dworkin and Smith differs from claim 111 in that it does not specify the buyer request as including an indication of the price the buyer is willing to pay. However, Kaye teaches the desirability of allowing a buyer to specify a maximum purchase price as part of the desired product information (col. 4, lines 11-20; col. 5, line 53 - col. 6, line 2) in order to locate a vendor willing to sell the desired product at a minimum cost. Since Dworkin is similarly directed to providing buyers with access to multiple vendors, it would have been obvious to an artisan of ordinary skill to allow a buyer to include a desired purchase price as part of the buyer request, as taught by Kaye, within the system of Dworkin in order to locate a vendor willing to sell the desired product at minimum cost. (FOA, page 9).

As described above, Kaye describes a system whereby a user using search criteria, such as item name, manufacturer information, quantity and cost, creates database searches. (See col. 5, lines 56-58). However, the buyer is not specifying a price at all (as with Dworkin). At the moment a buyer conducts a search, the seller has already specified the price. In fact, no other entity within Kaye's system knows of the price used in the buyer's search criteria (just as in Dworkin's system). As such, Kaye is nothing more than a system that allows a vendor, the seller, to specify a price and display it publicly. Kaye is also incapable of teaching or suggesting the present claim.

Smith does not cure the deficiencies of the Dworkin and Kaye combination. The Examiner states:

Although Dworkin provides text information regarding merchandise, it does not specify presenting video data. However, Smith teaches the desirability of allowing buyer access to a vendor supplied video image stored in a video file server (video source and database 6) for enhancing sales communication with the use of video (col. 1, line 51 - col. 3, line 27) such that it would have been obvious to an artisan of ordinary skill to incorporate such use of video, as taught by Smith, within the system of Dworkin in order to allow a buyer to view an image of the desired goods or services. (FOA, page 9).

As argued above, the Examiner has taken generic disclosure and applied the findings to the present claim. Smith involves the combination of audio and video signals from different sources and sending that combination to a telecommunication station and is limited to that function. As stated previously, the present claim emphasizes a central system for controlling the transaction. Smith may disclose a video source and database, however, it is the video or audio station 2 (a separate entity) and not the calling station 1 that enters the request for a display. As such, one skilled in the arts would not look to the generic disclosure of Smith to arrive at the present claim.

The cited references do not alone or in combination teach or suggest the present claim as demonstrated. Accordingly, the Applicant requests withdrawal of this rejection and allowance of the claim.

IX. Summary of § 103 Rejections

The Applicant respectfully submits that the rejected claims of the instant application are distinct and patentable. As described above, the primary references do not disclose each and every element of the claimed combinations in the rejected claims. Therefore, the claims are novel and non-obvious. Furthermore, the claimed combinations are not suggested by the cited art.

X. CONCLUSION

The Applicant respectfully submits that the rejected claims of the Application are distinct and patentable. As demonstrated above, the primary cited references do not disclose each and every element of the claimed combinations in the rejected claims. Therefore, the claims remain patentable. Furthermore, the claimed combinations were not suggested by the cited art.

Respectfully submitted,

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XI. CLAIMS APPENDIX

The claims in the instant application are as follows.

1-50. (Canceled)

51. (Previously Presented) A method of using a traffic control system via a computer terminal for communication involving a buyer terminal and at least one vendor site for the purpose of making sales-related transactions, the method including the steps of:

establishing electronic communication from a buyer terminal to receive a buyer request via the traffic control system indicating a transaction including a good or service and a specified maximum purchase price provided during an initial phase of the communication for a particular good or service that the buyer is willing to pay;

establishing electronic communication with at least one vendor site to transmit the buyer request whereby an interested vendor receiving the buyer request may respond with specific video data relating to the particular good or service, the transaction;

making a record regarding the transaction for billing purposes and utilizing data that identifies the buyer wherein the data includes a check digit;

qualifying the buyer for access to the traffic control system for directing communications between the buyer and the vendor relating to transactions at least in part based on the check digit; and

providing an electronic mail message to the buyer relating to the transaction.

52. (Previously Presented) A method according to claim 51 including a further step of registering said vendor sites with respect to various classifications.

53. (Previously Presented) A method according to claim 52 wherein said various classifications comprise merchandise classifications.

54. (Previously Presented) A method according to claim 53 wherein said various classifications comprise service classifications.

55. (Previously Presented) A method according to claim 54 wherein said various classifications comprise merchandise and service classifications.

56. (Previously Presented) A method according to claim 51 wherein the buyer's request is registered and includes the buyer's electronic mail (e-mail) address.

57. (Previously Presented) A method according to claim 51 wherein the buyer's request is registered and includes the buyer's name.

58. (Previously Presented) A method according to claim 51 wherein the buyer's request is registered and includes an entry for a general category of a good or service of interest to the buyer.

59. (Previously Presented) A method according to claim 51 wherein the buyer's request is registered and includes an entry for a specific good or service of interest to the buyer.

60. (Previously Presented) A method according to claim 51 wherein the buyer's request is registered and includes an entry for quantity.

61. (Previously Presented) A method according to claim 51 wherein the buyer's request is registered and includes an entry relating to geography.

62. (Previously Presented) A method according to claim 51 wherein the buyer's request is registered and includes an entry for delivery location.

63. (Previously Presented) A method according to claim 51 wherein the buyer's request is registered and includes an entry for delivery date.

64. (Previously Presented) A method according to claim 51 wherein the buyer's request is registered and includes an entry for the buyer's telephone number.

65. (Previously Presented) A method according to claim 51 wherein a response to a buyer request is via electronic mail (e-mail).

66. (Previously Presented) A method according to claim 51 further including a step of informing a buyer that the request has been received.

67. (Previously Presented) A method according to claim 66 wherein the step of informing the buyer includes indicating the number of vendors to whom the request has been transmitted.

68. (Previously Presented) A method according to claim 51 further including a step of providing video data including high resolution or dynamic video to the buyer relating to the good or service.

69. (Previously Presented) A method according to claim 51 wherein at least one buyer can access the system via an on-line computer service.

70. (Previously Presented) A method according to claim 51 further including a step of providing an indication that a transaction has been consummated.

71. (Previously Presented) A method according to claim 51 wherein the buyer enters qualification data to access the system.

72. (Previously Presented) A method according to claim 71 wherein the qualification data is the buyer's PIN number.

73. (Previously Presented) A method according to claim 51 wherein the vendor terminal site includes a processing capability.

74. (Previously Presented) A method according to claim 51 wherein the vendor terminal site includes various data storage facilities.

75. (Previously Presented) A method according to claim 74 wherein the various data storage facilities include permanent memory storage.

76. (Previously Presented) A method according to claim 75 wherein the various data storage facilities include a video storage.

77. (Previously Presented) A method according to claim 51 further comprising the step of:
providing the buyer with an identification number to identify the transaction.

78. (Previously Presented) A method according to claim 77 wherein the buyer is provided with the identification number before the transaction.

79. (Previously Presented) A method according to claim 77 wherein the buyer is provided with the identification number after the transaction.

80. (Previously Presented) A method of using a traffic control system via a computer terminal for communication involving a buyer terminal and a plurality of different vendor sites for consummating sales transactions, the method including the steps of:

establishing electronic communication from a buyer terminal to receive a buyer request expressing an area of interest via the traffic control system indicating a transaction including a good or service and a specified maximum purchase price provided during an initial phase of the communication for a particular good or service that the buyer is willing to pay;

establishing electronic communication with at least one vendor terminal site selected from the plurality of different vendor sites by the traffic control system to transmit the buyer request whereby an interested vendor site receiving

the buyer request responds, as to make a transaction and whereby the interested vendor site communicates stored video data to the buyer terminal including dynamic or high resolution video and text data, where the buyer utilizes a mouse to manipulate the stored video at the buyer terminals;

making a record regarding the transaction for billing purposes; and

providing an electronic mail message to the buyer terminal relating to the transaction.

81. (Previously Presented) A method according to claim 80 including a further step of registering said vendor sites with respect to various classifications.

82. (Previously Presented) A method according to claim 81 wherein said various classifications comprise merchandise classifications.

83. (Previously Presented) A method according to claim 82 wherein said various classifications comprise merchandise classifications.

84. (Previously Presented) A method according to claim 83 wherein said various classifications comprise merchandise classifications.

85. (Previously Presented) A method according to claim 80 wherein the buyer's request is registered and includes the buyer's electronic mail (e-mail) address.

86. (Previously Presented) A method according to claim 80 wherein the buyer's request is registered and includes the buyer's name.

87. (Previously Presented) A method according to claim 80 wherein the buyer's request is registered and includes an entry for a general category of a good or service of interest to the buyer.

88. (Previously Presented) A method according to claim 80 wherein the buyer's request is registered and includes an entry for a specific good or service of interest to the buyer.

89. (Previously Presented) A method according to claim 80 wherein buyer's request is registered and includes an entry for quantity.

90. (Previously Presented) A method according to claim 80 wherein the buyer's request is registered and includes an entry relating to geography.

91. (Previously Presented) A method according to claim 80 wherein the buyer's request is registered and includes an entry for delivery location.

92. (Previously Presented) A method according to claim 80 wherein the buyer's request is registered and includes an entry for delivery date.

93. (Previously Presented) A method according to claim 80 wherein the buyer's request is registered and includes an entry for the buyer's telephone number.

94. (Previously Presented) A method according to claim 80 wherein a response to a buyer request is via electronic mail (e-mail).

95. (Previously Presented) A method according to claim 94 wherein the response includes an identification number to identify the transaction.

96. (Previously Presented) A method according to claim 80 further including a step of informing a buyer that the request has been received.

97. (Previously Presented) A method according to claim 96 wherein the step of informing the buyer includes indicating the number of vendors to whom the request has been transmitted.

98. (Previously Presented) A method according to claim 80 wherein the stored video data is provided with text data to the buyer relating to the good or service.

99. (Previously Presented) A method according to claim 80 wherein at least one buyer can access the system via an on-line computer service.

100. (Previously Presented) A method according to claim 80 further including a step of providing an indication that a transaction has been consummated.

101. (Previously Presented) A method according to claim 80 wherein the buyer enters qualification data to access the system.

102. (Previously Presented) A method according to claim 101 wherein the qualification data is the buyer's PIN number.

103. (Previously Presented) A method according to claim 101 wherein the vendor site includes a processing capability.

104. (Previously Presented) A method according to claim 101 wherein the vendor site includes various data storage facilities.

105. (Previously Presented) A method according to claim 104 wherein the various data storage facilities include permanent memory storage.

106. (Previously Presented) A method according to claim 104 wherein the various data storage facilities include a video storage.

107. (Previously Presented) A method for enabling communications including video communications under control of a traffic control system via a public communication system between at least one user at a user terminal and at least one responding vendor site, comprising the steps of:

establishing an interface to enable the communication between at least one user at the user terminal and the responding vendor site by receiving inquiry data from the user when the user initiates a communication including identification data relating to the user and an area of interest including an indication of the price that the user is willing to pay for a product or service relating to the area of interest;

receiving and storing data relating to various areas of interest at a memory storage associated with a responding vendor site under control of the traffic control system;

selectively selecting the responding vendor site from a plural of vendor sites under control of the traffic control system based on the area of interest expressed by the user and the indication of the price that the user is willing to pay, and selectively locating video and text data relating to the area of interest and providing selected video and text data to the user at the user terminal; and

providing an electronic mail message to the user terminal relating to the area of interest.

108. (Previously Presented) A method using one or more central control units for selectively directing communications via a public communication system from buyers to one or more vendor sites, comprising the steps of:

at least one buyer communicating with the central control unit via an on-line computer service, the buyer utilizing a personal computer with a video capability, the buyer as part of the step of communication indicating an area of interest including an indication of the price that the buyer is willing to pay for a product or service relating to the area of interest;

selectively determining under control of the central unit, a select vendor or vendors to which a communication from the buyer should be routed based on the area of interest;

routing the communication to a select vendor or vendors under control of the central unit; and

providing the buyer with text and video data relating to the area of interest, the text and video data relating to the select vendor or vendors and provided under control of the central unit.

109. (Previously Presented) A traffic control system for enabling communications including video communications via a public communication system between at least one user at a user terminal and at least one responding site, comprising:

an interface for enabling a communication between at least one user at the user terminal and a select responding site by receiving inquiry data from the user when the user initiates the communication, the inquiry data relating to the user's area of interest and including an indication of the price that the user is willing to pay for a product or service relating to the area of interest, the interface also receiving identification data provided from the user terminal;

memory storage associated with the at least one select responding vendor site to receive and store data relating to various areas of interest;

a processor coupled to the interface, wherein the processor utilizes the area of interest indicated by the user to selectively determine and select the responding site from a plurality of sites, and wherein the processor obtains select video and text data relating to the area of interest from the responding vendor site and provides the select video and text data to the user at the user terminal; and

wherein an electronic mail message is transmitted to the user terminal relating to the user's area of interest.

110. (Previously Presented) A system comprising one or more central control units for selectively directing communications via a public communication system from buyers to one or more vendor sites, comprising:

interface structure to facilitate communication between at least one buyer and the central control unit via an on-line computer service, the buyer utilizing a personal computer with a video capability, the buyer indicating an area of interest via the personal computer including an indication of the price that the buyer is willing to pay for a product or service relating to the area of interest;

processing capability for selectively determining under control of the central unit, a select vendor or vendors to which a communication from the buyer should be routed based on the area of interest; and

routing the communication to a select vendor or vendors under control of the central unit;

a memory associated with the vendor or vendor sites wherein text and video data relating to the area of interest and other data is stored; and

whereby the processor provides the buyer with selective text and video data relating to the area of interest, the text and video data relating to the select vendor or vendors and provided under control of the central unit.

111. (Previously Presented) A system for facilitating selective commercial transactions between a plurality of buyers and a plurality of vendors of items, through a telephonic communication system capable of providing communication between a vendor and buyer sites associated with buyers and including an input means and a display, the system comprising:

means for causing a vendor to be identified for selection for a buyer at a buyer site when the buyer indicates an area of interest including an indication of the price that the buyer is willing to pay for merchandise items relating to the area of interest;

means for effecting presentation of merchandise items including video presentations of the merchandise items with text data on a display for the buyer's observation;

an item database associated with a vendor for storing information on identified merchandise items;

means for receiving information from the item database, including data to indicate a cost associated with a presented item;

a buyer information database for storing information relating to a buyer; and

a control means for:

responding to buyer inquiries, communicated through the input means, regarding a presented merchandise item by accessing the item

database to selectively determine and retrieve information relating to said merchandise item and to present said information to the buyer by means of the display;

receiving the buyer's selection of a presented merchandise item through the input means,

exchanging communications between vendors and buyers during which a sale can be consummated for a presented merchandise item to the buyer, including communication by at least one electronic mail message relating to the presented merchandise item.

XII. RELATED PROCEEDINGS APPENDIX

A. Related Appeals and Interferences in the U.S. Patent Office

An Appeal of a related patent, U.S. Patent No. 7,019,770, at the U.S. Patent Office is listed below:

1. U.S. Application Serial No. 08/407,064 to Katz, Appeal No. 2003-1089.
(copy of Decision on Appeal dated: August 25, 2004, see EXHIBIT A)

B. Court Proceedings of Related Patents

None

XIII. EVIDENCE APPENDIX

EXHIBIT A

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 46

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RONALD A. KATZ

Appeal No. 2003-1089
Application 08/407,064

ON BRIEF

Before OWENS, LEVY and BLANKENSHIP, *Administrative Patent Judges*.
OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal is from the final rejection of claims 34-49 and 51-115. Claims 26-33 and 50, which are all of the other pending claims, have been allowed.

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THE INVENTION

The appellant claims a videophone system for monitoring remote locations from a central unit. Claims 34 and 40 are illustrative and are appended to this decision.

THE REFERENCES

Fuller et al. (Fuller)	4,843,377	Jun. 27, 1989
Thompson	5,109,399	Apr. 28, 1992
Laycock	5,202,759	Apr. 13, 1993
Yamaguchi	5,264,929	Nov. 23, 1993

(filed Dec. 16, 1991)

Peter Wright, "Vision by telephone" (Vision), 8243 Computer Systems, No. 1, Bromley, Great Britain (Jan. 6, 1986).¹

THE REJECTIONS

The claims stand rejected under 35 U.S.C. § 103 as follows: claims 34-39, 46, 47, 49, 52, 54-78, 80-89, 93-104, 106-110, 114 and 115 over Vision in view of Yamaguchi and Laycock, claims 40-45 over Vision in view of Laycock and Thompson, claims 48, 51, 90-92 and 111-113 over Vision in view of Yamaguchi, Laycock and Thompson, and claims 53, 79 and 105 over Vision in view of Yamaguchi, Laycock and Fuller.

¹ The pages in Vision are not numbered. Hence, we refer to them as if they are numbered consecutively from 1 to 4.

OPINION

We affirm the rejection of claims 40-45 and reverse the rejections of the other claims.

Claims 34-39, 46-49 and 51-115

Among claims 34-39, 46-49 and 51-115, we need to address only the independent claims, i.e., claims 34, 46, 77 and 103.

Claim 34 requires a telephonic interface apparatus for interconnecting television camera structures at a plurality of scrutiny locations to at least one television display structure at a central location, and a computer control unit, at the central location, programmed to sequentially and automatically actuate the telephonic interface apparatus to establish television communication between the central station and the plurality of scrutiny locations.

Claim 46 requires a telephonic interface apparatus for interconnecting television communication structures at a plurality of remote locations and a central station, and a control computer programmed to sequentially and automatically actuate the telephonic interface apparatus to selectively communicate from the plurality of remote locations to one of a plurality of television display structures at the central station.

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Claim 77 requires a telephonic interface apparatus for interconnecting television communication structures at a plurality of remote locations and a central station, and a control computer for sequentially actuating the telephonic interface apparatus to selectively communicate in sequence from the plurality of remote locations to at least one of a plurality of television display structures at the central station.

Claim 103 requires a telephonic interface apparatus for interconnecting video communication structures at a plurality of remote locations and a central station, and a control computer for actuating the telephonic interface apparatus to selectively communicate in sequence from the plurality of remote locations to at least one of a plurality of video display structures at the central station.

During patent prosecution, claims are to be given their broadest reasonable interpretation consistent with the specification, as the claim language would have been read by one of ordinary skill in the art in view of the specification and prior art. See *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); *In re Sneed*, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983); *In re Herz*, 537 F.2d 549, 551, 190

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USPQ 461, 463 (CCPA 1976); *In re Okuzawa*, 537 F.2d 545, 548, 190 USPQ 464, 466 (CCPA 1976).

The appellant's specification indicates that by "remote locations" the appellant means locations that are distributed from a central location over a wide area, such as grocery stores, banks, warehouses, automatic tellers, restaurants, factories, businesses and parking structures (page 2, lines 34-35; page 3, lines 9-10; page 7, lines 17-21). Also, the specification discloses that each remote location can have multiple video speakerphones (page 4, lines 19-21; page 7, lines 27-29; page 13, lines 4-7). Thus, the term "remote locations", given its broadest reasonable interpretation in view of the appellant's specification, refers only to locations distributed over a wide area and not to spaced apart video speakerphone sites at a particular location. The meaning of "remote sites" and "remote stations" in the prior art (*Vision*, page 1, third column, first three paragraphs; page 2, first column, first full paragraph) is consistent with this meaning, as is the appellant's interpretation of "remote locations" (reply brief, pages 7 and 10). As for the meaning of "scrutiny locations", the appellant uses this term and "remote locations" synonymously

(specification, page 7, lines 5-6 and 17-18; page 16, lines 29-35; figure 3).

Vision discloses a surveillance and alarm system for monitoring remote sites, for example, 60 remote sites, each of which has up to 10 video cameras (page 1, third column). In the surveillance mode, keying a two digit number into a base station triggers a 60-way autodialer to dial out to the selected remote site (page 2, first column). Then, sequentially, a picture is automatically taken by each camera at that remote site. See *id.*

The examiner argues:

In the "Vision" article, the central base station monitors a plurality of remote sites, for example, 60 separate remote sites (see first page, third column, first two paragraphs), by sequentially auto-dialling each of the 60 locations and displaying images captured by each camera for each remote site (see second page, first column, first two paragraphs beginning at "Security applications"). Clearly, images from the plurality of remote locations are displayed in sequence in the surveillance mode since the plurality of remote locations are sequentially called via the central base station 60-way surveillance auto-dialler (note base station surveillance auto-dialler depicted in the figure on the third page). [answer, page 9]

* * *

The "Vision" system is a microprocessor-based system which automatically dials a plurality of remote sites (page 1, second column, second paragraph) but differs from the invention in that the actuation of the autodialing operation is initiated by a human operator rather than under computer timing control. [answer, page 10]

The examiner's argument that the Vision system automatically sequentially dials the 60 remote sites is incorrect. In the Vision system a single remote site is manually dialed using a two digit code (second page, first column, first full paragraph). The only automatic sequencing that takes place is among the cameras at that site. See *id.*

Yamaguchi discloses a video signal switching apparatus having a change-over switch for selectively outputting, under the control of a central processing unit (CPU), video signals from a plurality of video signal sources such as supervisory video cameras (col. 2, line 46 - col. 3, line 60; col. 4, lines 18-26). The CPU can control the switching operation at times provided by stored timer data (col. 11, lines 36-40).

The examiner argues (answer, pages 9-10):

Yamaguchi was relied upon to show the advantage of using computer timing control when monitoring a plurality of sites rather than requiring an operator at the monitoring site to manually activate monitoring operations (see col. 12, lines 1-39). The examiner did not suggest placing the "Yamaguchi" switch within the central station of the "Vision" system.

The examiner relies upon Yamaguchi only for a suggestion to use computer timing control when carrying out what the examiner considers to be Vision's automatic sequential dialing to remote locations. As pointed out above, however, the Vision system does

not automatically sequentially dial the remote locations.

Laycock is relied upon by the examiner (answer, pages 5-6) for a suggestion to use data compression so that Vision's video can be dynamic rather than slow scan (col. 2, line 65 - col. 3, line 13). The examiner does not rely upon Laycock for any disclosure that remedies the deficiency in Vision as to automatically sequentially dialing remote sites.

We therefore conclude that the examiner has not carried the burden of establishing a *prima facie* case of obviousness of the systems claimed in the appellant's claims 34, 46, 77 and 103. Accordingly, we reverse the rejections of these claims and the claims that depend therefrom.²

Claims 40-45

The appellant indicates that claims 40-45 stand or fall together (brief, page 12). We therefore limit our discussion to one of these claims, i.e., claim 40, which is the sole independent claim among them. See *In re Ochiai*, 71 F.3d 1565, 1566 n.2, 37 USPQ2d 1127, 1129 n.2 (Fed. Cir. 1995); 37 CFR § 1.192(c)(7)(1997).

² The examiner does not rely upon Thompson or Fuller for any disclosure that remedies the deficiency in Vision, Yamaguchi and Laycock as to the independent claims.

In the alarm mode the Vision system observes monitored locations at each remote site from a central station using autodialer dial-up connections originating from the monitored locations (page 2, first column, third full paragraph). A telephonic interface apparatus interconnects the central station and television cameras at each monitored location (page 1, first column, first two paragraphs; page 2, first column, third full paragraph). An alarm sensor triggers a television camera to take four snap shots which are stored and, after an autodialer call is made to the central station, are displayed as slow scan images on a television display at the central location. See *id.* A fifth picture is taken and, while it is being transmitted to the central station, the other cameras at the monitored location are sequenced automatically (page 2, first column, third full paragraph).

Laycock discloses that the use of video data compression and differential pulse code modulation significantly reduces signal bandwidth such that video image signals can be dynamic rather than slow scan (col. 2, line 65 - col. 3, line 13).

Thompson discloses "a computer-based system for receiving emergency telephone calls which, upon receipt of the call, automatically displays to the operator a map showing a geographic

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location associated with the calling party as well as other pre-specified textual information pertaining to the calling party" (col. 1, lines 63-68). The system includes a customer database (52) that contains records about the phone customers served by the system (col. 4, lines 30-32). Each record includes a customer's name, address and telephone number, a pair of map coordinates corresponding to a geographic location associated with the telephone number, and textual information which may include any information considered pertinent to the individual number and which may be useful for emergency services should the need arise (col. 3, lines 10-20; col. 4, lines 30-40). The customer database can be accessed by the emergency caller's telephone number being input to the system using automatic number identification (ANI) (col. 3, lines 20-24). The customer record information and a map showing the area surrounding the location of the calling telephone then are shown on a display (col. 3, lines 26-33; col. 4, line 59 - col. 5, line 19).

The appellant acknowledges in the brief (page 25) that ANI signals are a form of D channel type signals.³ The appellant argues: "The claimed use of 'D' channel type signals is totally foreign to that of 'Thompson.' While Thompson involves 9-1-1 calls from persons, claim 40 involves automated operations prompted by 'alert situations'" (brief, page 26). Claim 40 does not require that the D channel type signals are used for alert situation indication. The only use of the D channel type signals required by the claim is for activating the control computer. Thompson's computer is activated when the telephone number of the calling party is input to the computer system using ANI signals (col. 3, lines 20-24) which the appellant has acknowledged are D channel type signals.

The appellant argues: "Distinct from the identification information provided by 'Thompson,' the system of claim 40

³ The appellant also acknowledges in the specification (page 10, lines 11-14; page 19, lines 21-24) that ANI signals can be carried on the D channel. These acknowledgments are supported by 1) *Newton's Telecom Dictionary* 169 (Telecom Library Inc., 1991) (a copy of which is provided to the appellant with this decision), which states that in the basic rate interface the D channel carries ANI characteristics of a call, 2) computer search results provided to the appellant with this decision, and 3) U.S. 5,003,595 to Collins et al. (filed August 29, 1989), which states: "The D-channel of this primary rate interface carries a setup message 111 including the automatic number identification number 113 to the PBX 121" (col. 4, lines 37-39).

displays 'graphic data including an alert situation indication'" (brief, page 26). The appellant's specification indicates that the term "graphic data" as used by the appellant includes displayed text (page 30, lines 6-8). Thompson discloses that the displayed consumer record data includes "any information considered pertinent to the individual number and which may be useful for emergency services should the need arise" (col. 3, lines 17-20). This disclosure would have fairly suggested, to one of ordinary skill in the art, including in the customer record an alert situation indication such as a medical condition of the customer.

The appellant argues that "'Thompson' operates in a manner foreign to either 'Vision' or 'Laycock,' involving manual emergency calls where a caller is on the line with a security person during communication" (brief, page 23). Thompson's call is initiated by a person rather than by an autodialer as in Vision. However, it would have been apparent to one of ordinary skill in the art that Thompson's ANI would be effective regardless of whether the call is initiated manually-or automatically. Thompson, therefore, would have fairly suggested, to one of ordinary skill in the art, incorporating his system into the Vision system to determine the location of the telephone

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from which each autodialed call is received and to display the telephone's location and information relevant to that location.

For the above reasons we are not convinced of reversible error in the examiner's rejection of claims 40-45. Accordingly, we affirm the rejection of those claims.

DECISION

The rejections under 35 U.S.C. § 103 of claims 34-39, 46, 47, 49, 52, 54-78, 80-89, 93-104, 106-110, 114 and 115 over Vision in view of Yamaguchi and Laycock, claims 48, 51, 90-92 and 111-113 over Vision in view of Yamaguchi, Laycock and Thompson, and claims 53, 79 and 105 over Vision in view of Yamaguchi, Laycock and Fuller, are reversed. The rejection under 35 U.S.C. § 103 of claims 40-45 over Vision in view of Laycock and Thompson is affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

TERRY J. OWENS
Administrative Patent Judge

STUART S. LEVY
Administrative Patent Judge

BOARD OF PATENT

APPEALS AND

Howard B. Blankenship
Administrative Patent Judge

INTERFERENCES

TJO/ki

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Brinks, Hofer, Gilson & Lione
P.O. Box 10395
Chicago, IL 60611

APPENDIX

34. A system for monitoring a plurality of scrutiny locations from a central station using dial-up telephone facilities comprising:

television camera structures located at said plurality of scrutiny locations for providing representative dynamic image television signals representative of scenes from said plurality of scrutiny locations;

at least one television display structure located at said central station;

telephonic interface apparatus for interconnecting said television camera structures at said plurality of scrutiny locations to said at least one television display structure at said central location; and

a control unit located at said central station including a computer and a memory for storing identification designation data and graphic display data for said plurality of scrutiny locations, said control unit programmed to sequentially and automatically actuate, under control of said computer, said telephonic interface apparatus to establish television communication between said central station and said plurality of scrutiny locations to provide a sequence of remote location displays at said central station, for programmed intervals, showing a scene and graphic display data of the plurality of scrutiny locations, said control unit further including interrupt structure for receiving an interrupt signal manifesting a predetermined circumstance to interrupt said sequence of remote location displays controlled by the computer and to provide an alternate display of a scene from another of said plurality of scrutiny locations along with graphic display data.

40. A system for observing a plurality of monitored locations from a central station utilizing dial-up telephone facilities comprising:

at least one television camera structure located at each of said plurality of monitored locations for providing scene representative dynamic image television signals of location displays;

a plurality of switch structures at each of said plurality of monitored locations for providing alert signals indicating various alert situations;

at least one television display structure at said central station for providing a scene display of said plurality of monitored locations represented by said scene representative dynamic image television signals;

telephonic interface apparatus for interconnecting said television camera structures at said monitored locations and said central station, said telephonic interface apparatus including at least one autodialer apparatus at said monitored locations for dial-up connection originated from a monitored location, said telephonic apparatus further including "D" channel type apparatus, for providing "D" channel type signals to manifest said various alert situations; and

a control computer activated by said "D" channel type signals and including memory structure addressable to supply location graphic data, including an alert situation indication for actuating said at least one television display structure to display the graphic data including an alert situation indication along with said scene representative dynamic image television signals of said location displays.